

(26,119)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 652.

PUBLIC SERVICE COMPANY OF NORTHERN ILLINOIS,
APPELLANT,

vs.

STEPHEN B. CORBOY, DRAINAGE COMMISSIONER OF
THE CALUMET DITCH.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF INDIANA.

INDEX.

	Original.	Print
Caption.....	1	1
Bill of complaint.....	2	1
Map showing drainage area of Little Calumet River above Blue Island.....	18	9
Subpoena and marshal's return.....	19	10
Answer and motion to dismiss bill of complaint.....	20	11
Special findings of fact.....	34	20
Conclusion of law.....	41	29
Decree.....	42	30
Assignment of errors.....	42	30
Petition for appeal and allowance.....	43	31
Bond on appeal.....	44	32
Certificate of jurisdictional question.....	46	34
Citation and service.....	48	34
Præcipe for record.....	49	35
Clerk's certificate.....	51	36

1 Pleas of the District Court of the United States for the District of Indiana, Begun and Holden at the United States Court-house, in the City of Indianapolis, in said District, on the First Tuesday in May, in the Year of Our Lord One Thousand Nine Hundred and Seventeen. Before the Honorable Albert B. Anderson, Judge of said District Court.

In Equity.

No. 215.

PUBLIC SERVICE COMPANY OF NORTHERN ILLINOIS

vs.

STEPHEN P. CORBOY, Drainage Commissioner of the Calumet Ditch.

Be it remembered that heretofore, to-wit: At the November Term of said Court, on the 30th day of March, 1917, before the Honorable Albert B. Anderson, Judge of said Court, the following proceedings in the above entitled cause were had, to-wit:

Comes now the complainant by Messrs. Isham, Lincoln and Beale, and Smith, Remster, Hornbrook and Smith, and files a Bill of complaint in the words and figures following, to-wit:

2 UNITED STATES OF AMERICA,
 District of Indiana, ss:

In the District Court of the United States for the District of Indiana.

PUBLIC SERVICE COMPANY OF NORTHERN ILLINOIS

v.

STEPHEN P. CORBOY, Drainage Commissioner of the Calumet Ditch.

To the Honorable Judges of the District Court of the United States for the District of Indiana:

Public Service Company of Northern Illinois, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois, having its principal office in the City of Chicago, Illinois, brings this its bill of complaint against Stephen P. Corboy, Drainage Commissioner for the construction of the Calumet Ditch under the proceeding now pending in the Circuit Court of Porter County, Indiana, entitled, "In the Matter of the Calumet Ditch", Cause No. 764, said Stephen P. Corboy being a citizen of the State of Indiana and a resident of said Porter County.

Thereupon, complainant states as follows:

1. Complainant is a public utility as defined in an Act of the Legislature of the State of Illinois entitled, "An Act to Provide for the Regulation of Public Utilities", approved June 30, 1913, and in force January 1, 1914, and is subject to the provisions of that Act. Complainant for several years has been and is now engaged in the business of generating, selling and distributing electrical energy, gas and steam throughout the northern portion of the State of Illinois, and is authorized by its charter so to do.

2. Complainant generates such electrical energy at its various generating stations located in different parts of said territory, some of which are operated by steam power and others by water power with steam power as an auxiliary. The energy so generated is generally transmitted from the generating stations to complainant's various substations from which it is distributed directly to its customers, but in some instances complainant distributes such energy directly to its customers from its generating stations. Some of its generating stations are also connected with other generating stations in order that the energy generated at one station may be transmitted to another generating station, from which it is distributed to various substations and customers of complainant.

3. One of the electrical generating stations operated by complainant is located upon the south bank of the Little Calumet River, a short distance from the City of Blue Island, in Cook County, Illinois. The land owned by complainant upon which said station is located, and which is used by complainant in connection with the operation of said station extends to the center line of said river and has a total area of approximately thirty-eight (38) acres and a frontage of approximately fourteen hundred and fifty (1450) feet upon said river. As such riparian owner of land upon said river complainant is entitled, under the law of Illinois, to the use and enjoyment of the water in said river for the operation of said station and to have such water flow in its natural and accustomed course without obstruction or diversion of such flow at any point upon said river above said station. Said station consists of two buildings united for purposes of operation, one of which belongs to complainant and the other to Commonwealth Edison Company, likewise a public utility corporation organized and existing under and by virtue of the laws of the State of Illinois, and engaged in the business of generating and selling electrical energy in said City of Chicago. The building of said station belonging to complainant will hereinafter be sometimes referred to as the "main station" and the building belonging to said Commonwealth Edison Company as the "Addition". The main station and Addition consist of a concrete steel and brick fireproof building approximately three hundred ten (310) feet long by two hundred ten (210) feet wide, containing the most modern steam boiler and turbine electric generating equipment. The main station now contains five steam turbo-generators for the generating of electrical energy, having a total rated capacity of twenty-three thousand five hundred (23,500) kilowatts of energy, which are now operated by complainant by means of steam supplied from eight water

5 tube boilers of four hundred horse power capacity each, and twelve such boilers of five hundred horse power capacity each. The Addition will soon be completed and will contain two steam turbo-generators having a capacity of twelve thousand five hundred kilowatts each, which will be operated by steam supplied from four water tube boilers having a capacity of twelve hundred horse power each. One of said turbines will be in readiness for operation within one month, and the other of said turbines within seven months from the date hereof. The Addition is being built upon land now owned by complainant and leased by it to said Commonwealth Edison Company for a term of ten years ending January 2, 1926, under a lease dated January 2, 1916, between complainant and said Commonwealth Edison Company. The two turbines and all other equipment installed by said Commonwealth Edison Company in the Addition are installed by it under and pursuant to the terms of said lease. Upon the termination of said lease complainant is required by the terms thereof to purchase, and will then purchase, the Addition and all equipment therein belonging to said Commonwealth Edison Company. The Addition will be operated by complainant during the entire term of said lease under an operating agreement dated January 2, 1916, between complainant and said Commonwealth Edison Company, under which agreement complainant is obliged to supply and will supply to said Commonwealth Edison Company from the main station and the Addition at substantially all times when required by it twenty-five thousand kilowatts of electrical energy, or such amount

6 less than twenty-five thousand kilowatts as may be generated in the Addition, plus any surplus energy generated in the main station after complainant's other customers are supplied. In addition complainant is now supplying to said Commonwealth Edison Company fifty-two hundred kilowatts of electrical energy from the main station. Said lease and said operating agreement above mentioned were made under and pursuant to authority granted to complainant and said Commonwealth Edison Company by the State Public Utilities Commission of Illinois under the Act of the Illinois Legislature above mentioned. All of the energy so delivered by complainant to said Commonwealth Edison Company will be sold and distributed by it to its various customers in said City of Chicago. The total amount expended and to be expended in the construction of the main station and the Addition and in equipping the station and the Addition for operation, including the two turbines now being installed in the Addition, aforesaid, exceeds Two Million Dollars.

4. The electrical energy now being generated in the main station, except so much thereof as is delivered to said Commonwealth Edison Company for use in the City of Chicago, is distributed by complainant to more than fifty different substations, and at times a portion of said energy is transmitted by complainant to more than eight other generating stations operated by complainant. The total number of customers supplied with such energy by complainant from the main station, either directly or through its various substations, exceeds fifty-one thousand five hundred, and the total area so supplied exceeds three thousand square miles, having a population of more than two hundred and sixty thousand persons.

5. It is absolutely essential for the efficient and economical operation of a modern electrical generating station operated by steam power that such station be located upon or in close proximity to a stream of running water or a large body of water. In such a station the turbine which propels the electrical generator which generates the electrical energy is operated by means of steam power, and in order that such steam power may be utilized most efficiently and economically, the exhaust steam from the turbine must be discharged into a condenser, which usually consists of a shell containing a series of pipes set closely together, around which pipes the steam is discharged and through which pipes is constantly passed a flow of cooling water. By this means all exhaust steam is rapidly condensed into water, which is again used in the boilers and is again converted into steam. The water which flows through the pipes of the condenser becomes heated by contact with the pipes around which the exhaust steam passes and is then drawn off and discharged into the stream at a point below the station. If such exhaust steam be discharged into the air instead of into a condenser the propelling power of the turbine is greatly reduced, and the generating capacity of the station is correspondingly reduced. Also if such exhaust steam be discharged into the air instead of into a condenser the quantity of

8 steam required to generate a kilowatt hour of electrical energy is increased about four-fold and the cost of operating a station without the use of condensers is therefore so great as to be practically prohibitive in the district in which complainant conducts its business, and it is therefore absolutely essential for the efficient and economical operation of such a station that such condensers be used.

6. Condensers of the kind described in the foregoing paragraph are now being used and will continue to be used by complainant in the operation of its main station at Blue Island and will be used by complainant in the operation of the Addition when completed. The water used for cooling such condensers is and will be drawn by complainant from the Little Calumet River at a point adjacent to the station and after passing through the condensers is and will be discharged into the river down stream from the point of intake. It is absolutely essential for the operation of the station that the water flow in the river at a sufficient velocity and in a sufficient volume to carry away the heated water discharged from the condensers and to supply a quantity of condensing water sufficient for the operation of the station at its full generating capacity. Under present conditions the velocity of flow and volume of water in the river at the station are generally sufficient to carry off the heated water discharged from the condensers, and will ordinarily be sufficient to carry off

9 at all times in the year the heated water discharged from the condensers of the station (including the Addition) after said two additional turbines shall have been installed in the Addition and are in operation.

7. The Little Calumet River has its source in the western part of La Porte County, Indiana, and flows thence westerly across Porter and Lake Counties, Indiana, into Cook County, Illinois, where after

making a sharp turn near Blue Island it joins the Grand Calumet River which flows into Lake Michigan at South Chicago, Illinois. The Little Calumet River has on the south a tributary known as Salt Creek, which has its origin near Valparaiso in Porter County and which takes a northwesterly course to its intersection with the Little Calumet River at a point about four miles east of the west line of Porter County and about two miles south of the south shore of Lake Michigan. The Little Calumet River also has a tributary with its origin near Crown Point in Lake County, known as Deep River, which intersects the Little Calumet River at a point about $4\frac{3}{4}$ miles west of the west line of Porter County and about 3 miles south of the south shore of Lake Michigan. The Little Calumet River parallels the south shore of Lake Michigan through its course in Indiana. Between the lake and the river in Porter and Lake Counties extends a continuous ridge of dry land about thirty feet in height above the surface of the lake on the north, and approximately 10 twenty feet above the bottom of the river on the south. The

Little Calumet River drains a district of approximately six hundred square miles above complainant's Blue Island station, such district embracing portions of La Porte, Porter and Lake Counties in Indiana and a portion of Cook County in Illinois. The flow of water from this drainage district is therefore westerly through the Little Calumet River past complainant's Blue Island station into the Grand Calumet River in Cook County, Illinois, and thence into Lake Michigan at South Chicago. Attached hereto, marked Exhibit "A," and hereby made a part hereof, is a blue print showing the drainage district affected by the Little Calumet River and its tributaries. The Little Calumet River affords the only sufficient supply of water in the locality in which complainant's Blue Island Station is located for the operation of a large modern steam driven power station with suitable railroad connections for such a station.

8. During its October term, 1908, there was instituted in the Circuit Court of Porter County, Indiana, under the Drainage Act passed by the Legislature of the State of Indiana on March 11, 1907, a proceeding to establish and construct a ditch in that county extending from the Little Calumet River in a northerly direction to Lake Michigan. Said proceeding is entitled "In the Matter of the Calumet Ditch," and bears Cause No. 764. A final decree was entered in said proceeding on March 22, 1911, ordering that such ditch be established and constructed. Thereafter, on April 11 21, 1914, upon appeal to the Supreme Court of Indiana said decree was affirmed, and thereafter on January 8, 1917, upon writ of error to the Supreme Court of the State of Indiana, the judgment of said Court was affirmed by the Supreme Court of the United States. Complainant is not now and never has been a party to said proceeding.

9. It is proposed that said ditch shall consist of a main ditch and a branch ditch, known as the Salt Creek Arm. The main ditch will commence at a point in Lake Michigan approximately two and one-third miles east of the west line of Porter County and will run thence

in a southerly direction until it intersects the Little Calumet River; thence in a southwesterly direction into Lake County to a point upon said river approximately three and one-half miles west of the west line of Porter County; thence again in a southerly direction approximately three-quarters of a mile to the Deep River. The main ditch will intersect the Little Calumet River a number of times throughout the course of the ditch, and will practically create a new channel for said River. The Salt Creek Arm commences on the main ditch at a point approximately one and one-half miles distant from Lake Michigan and runs thence easterly a distance of approximately one and one-half miles to the intersection of the Little Calumet River and the Salt Creek Arm. Unless otherwise stated the word "ditch" as

hereinafter used will refer to and mean both the main ditch and the branch ditch. By means of said ditch it is proposed to divert the water of the Little Calumet River and its said tributaries in La Porte and Porter Counties and in a portion of Lake County from its normal, natural flow down the river to a northerly direction through said ditch into Lake Michigan. It was found by the Circuit Court of Porter County in the decree above mentioned that the total area proposed to be drained by said ditch would be approximately three hundred and fifty square miles, which is more than one-half of the entire area of the district drained by the Little Calumet River and its said tributaries lying above complainant's Blue Island station. Such diversion of the flow of water in said river and its said tributaries will reduce very largely the velocity of flow and volume of water in said river at complainant's Blue Island station, so that during the dry season of the year, that is, during the months of August, September and October, complainant will be unable to operate said station (including the Addition) with the same degree of efficiency and economy as said station is at present being operated and will continue to be operated if said diversion of flow is not permitted. It is difficult to state exactly to what extent the velocity of flow and volume of water in said river at said station will be reduced by such proposed diversion of flow of water, but complainant is advised by competent engineers, and believes, and therefore states as a fact that if said ditch is built and operated, more than one-half of the volume of water normally and naturally flowing in said river will be diverted into said ditch, and that because of such diversion the velocity of flow and volume of water in said river at said station will be less than one-half of its present velocity and volume at that point. Under such conditions of reduced velocity of flow and volume of water in said river the generating capacity of said station (including the Addition) during such dry season of the year will be less than twenty-four thousand (24,000) kilowatts of energy or less than one-half of the total capacity of said station (including the Addition). Under such operating conditions complainant will be unable to supply from said station to its various customers the amount of electrical energy which it has contracted to supply to them and will thereby sustain great and irreparable damage and injury. Complainant avers that such damage will largely exceed Three Thousand Dollars.

10. Under said decree of the Circuit Court of Porter County entered on March 22, 1911, the defendant, Stephen P. Corboy, was assigned Commissioner for the construction of said ditch and said defendant is now acting as such Commissioner and proposes to proceed with the construction and completion of said ditch. No portion of said ditch has yet been constructed. Defendant claims the right to construct and maintain said ditch under and by virtue of said proceeding instituted under the authority of the Drainage Act above mentioned. Complainant avers that the construction and main-

tenance of said ditch will alter and divert from its normal course and channel the flow of water in the Little Calumet

14 River, and will thereby interfere with the flow of an interstate river, and that the construction and maintenance of said ditch are for that reason illegal and void. Complainant further avers that the construction and maintenance of said ditch and the alteration and diversion thereby of the flow of water in the Little Calumet River and its said tributaries from its normal course and channel will injure and damage complainant's property in Illinois, and will deprive complainant of its property without due process of law, in conflict with and in violation of the Fourteenth Amendment to the Constitution of the United States, and that the construction and maintenance of said ditch are for that reason illegal and void. Complainant further avers that said decree of the Circuit Court of Porter County in said proceeding authorizing the construction and maintenance of said ditch and the alteration and diversion of the flow of water in said river from its normal, natural course and channel is an interference with the flow of an interstate river, and injures and damages complainant's property in Illinois, and deprives complainant of its property without due process of law, in conflict with and in violation of the Fourteenth Amendment to the Constitution of the United States, and is for such reasons illegal and void. Complainant further avers that said Drainage Act under which said proceeding was brought, to the extent that such Act authorizes the construction and

15 maintenance of said ditch and the alteration and diversion of the flow of water in said Little Calumet River and its said tributaries from its normal, natural course and channel to the injury and damage of complainant's property in Illinois, deprives complainant of its property without due process of law, and is in conflict with and in violation of the Fourteenth Amendment to the Constitution of the United States, and is for that reason illegal and void.

11. Complainant therefore prays that the defendant may be required to make full, true and perfect answer to all the allegations herein (but not under oath, an answer under oath being hereby expressly waived); that the construction and maintenance of said ditch may be held to be an interference with the normal, natural flow of water in an interstate river, and to deprive complainant of its property without due process of law, in conflict with and in violation of the fourteenth Amendment to the Constitution of the United States, and for such reasons illegal and void; that said decree of the Circuit Court of Porter County in said proceeding authorizing the construction and maintenance of said ditch and the

alteration and diversion of the flow of water in said river from its normal, natural course and channel may be held to be an interference with the flow of an interstate river, and to injure and damage complainant's property in Illinois, and to deprive complainant of its property without due process of law, in conflict with and in violation of the Fourteenth Amendment to the Constitution of the United

16 States, and for such reasons illegal and void; that said Drainage Act, to the extent that it authorizes the construction and maintenance of said ditch and the alteration and diversion of the flow of water in said river from its normal, natural course and channel to the injury and damage of complainant's property in Illinois, may be held to deprive complainant of its property without due process of law and to be in conflict with and in violation of the Fourteenth Amendment to the Constitution of the United States, and for that reason illegal and void; that the construction and maintenance of said ditch and said proceeding authorizing the same may be held generally illegal and void as against complainant; that a perpetual injunction may be issued restraining the defendant, his agents and representatives, from constructing and maintaining said ditch, and that complainant may have such other and further relief in the premises as the circumstances may require and to your Honor may seem meet.

Complainant further prays that a temporary injunction may forthwith be issued directed to said defendant, his agents and representatives, restraining him and them from constructing said ditch until the further order of this Court.

Complainant further prays that a writ of subpoena may issue out of and under the seal of this Court directed to the defendant, Stephen

17 P. Corboy, Commissioner for the construction of said ditch, requiring him to appear and answer this bill of complaint.

PUBLIC SERVICE COMPANY OF NORTHERN
ILLINOIS,

By FRANK J. BAKER, *Its Vice-President.*

SMITH, REMSTER, HORN BROOK & SMITH,
Its Solicitors.

ISHAM, LINCOLN & BEALE,
Solicitors and of Counsel.

STATE OF ILLINOIS,
County of Cook, ss:

Frank J. Baker, being first duly sworn, deposes and says that he is Vice President of Public Service Company of Northern Illinois, complainant in the foregoing bill of complaint; that he has read said bill and knows the matters therein stated, and that the same are true, except such allegations thereof as are therein stated to be made upon information and belief, and as to such allegations he believes them to be true.

FRANK J. BAKER.



Subscribed and sworn to before me this 29th day of March, A. D.
1917.

[SEAL.]

FRANK R. EVERS,
Notary Public.

(Here follows map marked p. 18.)

19 And thereupon, there issued out of the office of the Clerk of the District Court of the United States for the District of Indiana, the following subpœna in Chancery, directed to the Marshal of said District, which said subpœna is in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
District of Indiana:

The President of the United States of America to the Marshal of the District of Indiana, Greeting:

You are hereby commanded to summon Stephen P. Corboy, Drainage Commissioner of the Calumet Ditch, Valparaiso, if he be found in your District, to be and appear in the District Court of the United States, for the District of Indiana, aforesaid, at Indianapolis, on the 19th day of April next, to answer a certain Bill in Equity filed and exhibited in said Court against him by Public Service Company of Northern Illinois. Hereof he is not to fail under the penalty of the Law thence ensuing.

And have you then and there this writ.

Witness, the Honorable Albert B. Anderson, Judge of said Court, and the seal thereof, this 30th day of March, 1917.

[SEAL.]

NOBLE C. BUTLER, *Clerk.*

Memorandum.

The said defendant is required to file his answer or other defense in this suit in the Clerk's Office of said Court on or before the twentieth day after service, excluding the day thereof; otherwise the said Bill may be taken pro confesso.

NOBLE C. BUTLER, *Clerk.*

And afterwards, to-wit: on the 5th day of April, 1917, said subpœna was returned into the office of the said Clerk, with the following endorsement of the Marshal thereon:

DISTRICT OF INDIANA:

I received this Writ at Indianapolis, in said District, at — o'clock — M., on the 3rd day of April, A. D. 1917, and served the same in Porter County, as follows:

20 3rd day of April, 1917, by copy upon the within named Stephen P. Corboy, Drainage Commissioner of the Calumet Ditch, by reading the same to and within his hearing, and by delivering a true copy of this writ to him, at Valparaiso, Porter County, Indiana, April 3, 1917.

MARK STOREN,

U. S. Marshal,

By FRANK S. REAM, *Deputy.*

And afterwards, to-wit: At the November Term of said Court, on the 23rd day of April, 1917, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had to-wit:

Comes now the defendant by his solicitors and files an answer with a motion to dismiss the Bill of Complaint herein, which answer and motion are in the words and figures following, to-wit:

The Answer of Stephen P. Corboy, Drainage Commissioner of the Calumet Ditch, to the Bill of Complaint of Public Service Company of Northern Illinois, Complainant.

To the Honorable Judges of the District Court of the United States for the District of Indiana:

The defendant now, and at all times, saving and reserving to himself all manner of benefit and advantage of exception for the many errors and insufficiencies in the complainant's said bill of complaint, or to so much, or such parts thereof as this defendant is advised is material for him to make answer unto, answers and says:

1.

That defendant is without knowledge of whether said complainant is a public utility, or subject to control as such, as alleged in its bill of complaint; that defendant is also without knowledge as to the character of complainant's corporate organization or authority, and that he is without knowledge as to the character, extent or value of business in which said complainant is engaged, save
21 that it is engaged, to some extent unknown to defendant, in generating, distributing or selling electrical energy in some portion of the State of Illinois.

2.

That defendant is without knowledge as to what generating stations, if any, complainant has other than the electrical generating station hereinafter mentioned in paragraph three of this answer and that defendant is without knowledge as to manner of operation, or connections, or manner of business of such other stations, and that this defendant is also without knowledge of complainant's alleged substations or of the character of business connected therewith.

3.

This defendant admits that complainant is operating an electrical generating station located near the Little Calumet River, a short distance from the city of Blue Island, Cook County, Illinois, that being the station particularly referred to in the bill of complaint herein, but that defendant is without knowledge as to whether

said station is situate on the bank of said river. That this defendant it without knowledge as to whether complainant is the owner of the land occupied by said station, or of *what* used in connection with the operation of said station, and is without knowledge as to the extent of said land or as to the buildings or machinery thereon, or as to the cost or value thereof, or as to complainant's relations with, or obligations to, the Commonwealth Edison Company, or as to the extent of its business, or as to the plans for any further development of said property, or as to the cost of value of extent of the development had or to be had upon said property, and defendant is also without knowledge as to the authority of complainant or of said Commonwealth Edison Company to enter into the lease and obligations set forth in said bill of complaint, or as to whether there is any such lease. That this defendant is without knowledge whether the property used by complainant for its said generating station has a frontage on said Little Calumet River, but defendant says that complainant does not own or have any interest in the river north of the median line thereof; that this defendant is without knowledge as to whether said complainant has any riparian right in said river to the south of said line, but that defendant denies that complainant, as a riparian owner on said stream, if such it be, is entitled under the law of Illinois, as against this defendant, to have the water of said river flow in its natural and accustomed course without obstruction or diversion of such flow either at or above said station.

4.

That this defendant is without knowledge as to the boilers, condensers or machinery of complainant, or the distribution or extent of distribution by complainant, or the Commonwealth Edison Company, of electrical energy generated at said station, or as to what quantity of water may be used or intended to be used by complainant, or as to the value of said energy, or as to the number of complainant's customers, or of said Commonwealth Edison Company's customers, or as to the area supplied by complainant, or said Commonwealth Edison Company, with such energy, or as to the population within such area; that the defendant is without knowledge of the owners of or character of the buildings alleged to comprise said station, and is without knowledge whether said Commonwealth Edison Company is a public utility or as to the character or extent of its business.

5.

This defendant denies that it is essential to the efficient and economical operation of any modern electrical generating station operated by steam power that it should be located upon or in close proximity to a stream of running water or large body of water, and particularly does defendant deny that any such condition is necessary or important in the operation of the said plants.

at Blue Island described in said bill of complaint, either as they may now exist or as they may hereafter be developed. That this defendant is without knowledge whether it is economical and advantageous to discharge the exhaust steam of such a plant into a condenser, but this defendant alleges that there are a number of other means of performing the work of condensation alleged by complainant in its bill of complaint to be necessary, or here-
23 after required, which are not dependent upon the use of water, and which are quite as inexpensive, economical, efficient and long lived as those described in said bill; that there are other methods of condensing steam which are quite as inexpensive, economical, efficient and long lived as those described by complainant in its bill of complaint, which are quite as suitable for use in the development of steam in the power plant described by complainant as existing and contemplated at the station complainant described as situate on said river that are only partially dependent upon the use of water, and that there is, and at all times will be, notwithstanding the diversion of said Little Calumet River as it is alleged in said bill of complaint is proposed, more than sufficient water in such stream for the accomplishment of the ends desired by the use of any of such other methods. That any of such other methods of condensation of steam for use in such a plant as complainant alleges it has and contemplates could be installed at an expense of not to exceed \$2000, and this defendant further alleges that notwithstanding the making of the diversion of the waters of said stream as alleged in said bill of complaint to be proposed, it would be possible for said complainant, at an expense not exceeding two thousand dollars, to be used and bestowed wholly within the property alleged to be owned by it, so to adapt the same as to use its said condensers now existing or as proposed, in manner and form as complainant in its bill of complaint shows that it proposed to use them, and that this can be done without additional expense for operation. This defendant further answering says that the waters of said river are, and at all times have been and will continue at all times hereafter to be, whether said river is diverted or not, wholly unfit to use for condensing purposes. Defendant further alleges that about one year ago complainant entered into a contract in writing, which is still in force, whereby it acquired the right to take and at all times receive from what is known as the Calumet
24 Sag Channel, a public waterway under charge of a public corporation of the State of Illinois, to-wit: The Sanitary District of Chicago, as soon as said canal is completed, water from said canal, wholly fitted for condensation purposes, to the full extent that is or may be required by complainant and by said addition; that complainant will be able to obtain, and at all times to continue to use, said water at an expense of not exceeding \$2500 for installation, and that this right exists in said complainant in perpetuity and without cost to it for the use of water. That complainant will be able to obtain said water from said canal before any of the water in said river is diverted. Defendant further answering says that the water in said river is, and at all times will be,

so far insufficient as to render complainant's present and contemplated methods of condensation, as set forth in its bill of complaint, impractical and valueless.

And this defendant further answering says that it was not until long after the establishment of the drainage system in Indiana alleged in said bill of complaint to have been had by the judgment and decree of the Porter Circuit Court of Indiana that anyone had or used any condensing apparatus on, or in connection with, said property, but, on the contrary, that no use of the water of said stream was made by anyone until long after the entry of the decree establishing said drain, save to take from said river a small quantity of water for use in the steam boilers then on said property, not exceeding in volume one per centum of the water of said river, at its lowest state, and that any changes or improvements which have since been made on said property were made with full notice and knowledge of said proceeding and decree establishing said drain by said complainant.

6.

This defendant specifically denies that it is, or will be, necessary for the operation of said station and its addition that the full flow of said river be had, except as complainant uses its present methods of condensing the steam, but defendant says that if there is to be any such development of steam power upon said property as com-

25 plainant alleges to be contemplated, it will thereby be rendered necessary to cease condensation, or to substitute some other method of condensation for more than ten months during each and every year, even on the assumption that the waters of said river, as it now exists, in its varying stages, are wholly used by said complainant. Defendant further answering says that, with complainant's present method of condensation as set forth in its bill of complaint, all of the water of said river, on the assumption that it has its accustomed volume and flow, would be insufficient for complainant's purposes in condensing the steam it alleges that it is now generating at said station, and that such deficiency would exist during more than five months in each and every year. And this defendant further answering says that if complainant is now developing the steam power at said station which it alleges, and is dependent wholly upon the water of said river for condensation purposes, there are long periods during each and every year in which its steam is exhausted directly into the air, without any condensation whatever.

7.

This defendant admits that the general course of the Little Calumet River is as described in complainant's bill of complaint, but defendant alleges that said river has other tributaries and sources of supply in Indiana and Illinois above said station which are only partially shown by said bill of complaint. This defendant says that

the drainage area of said river above said station is approximately six hundred square miles, but he avers that the whole drainage area of said river is approximately seven hundred square miles, and he further avers that only the waters of a territory of three hundred and fifty square miles on the upper reaches of said river and in the State of Indiana will be diverted; that notwithstanding the diverting of the stream as it is alleged is contemplated by the carrying on and consummation of the work of this defendant commissioner, the same stream will still remain, at all points in Illinois, large and substantial in character, with a reasonable degree of current, at all times in the year, which river will be sufficient in volume and velocity for all the reasonable wants of all riparian proprietors on the said stream in Illinois. Defendant denies that the Little Calumet River affords the only sufficient source of supply of water in the locality in which said station is located for the operation of a large, modern steam driven power station with suitable railroad connections for such a station.

8.

Defendant admits the institution of the proceeding to establish and construct a drain as alleged in paragraph 8 of complainant's bill of complaint. He further admits the rendition of a final decree in said proceeding by said court establishing said drain and ordering the construction of the same, and he says that said decree was rendered March 11, A. D. 1911. He admits that from said final decree an appeal was prosecuted to the Supreme Court of Indiana, wherein said decree was afterwards affirmed, and defendant further admits that a writ of error was prosecuted from the final judgment of said Supreme Court in said cause to the Supreme Court of the United States, wherein the said judgment of the Supreme Court of Indiana was afterwards affirmed. That in said proceeding, and while the same was pending in said Supreme Court of Indiana, there was duly drawn in question by certain of the parties defendant thereto, who were appellants in said cause, the power of the court below to divert said stream because of its interstate character, but that said Supreme Court held that that fact did not aggrieve said appellants, and, as stated, affirmed the judgment of said lower court, and also denied, without opinion on the points so raised, a petition for a rehearing duly filed by said appellants, wherein the jurisdiction of said lower court over the subject-matter was duly challenged, in terms as follows: "And your petitioners further submit that inasmuch as the Porter Circuit Court did not acquire lawful jurisdiction in rem over the rights and properties of these petitioners, that the proceedings, judgments and decree against them, herein, is to deprive them of property without due process of law, and in violation of the provision in that behalf, in the Fourteenth Amendment to the Constitution of the United States. And this because there cannot be due process *is* a suit in rem until the res is lawfully seized as required by statute. Second. The Supreme Court of Indiana erred in holding and deciding the Porter Circuit Court had

the power and jurisdiction to compel these appellants and each of them severally to permit the State of Indiana and its officers and agents to make, dig and maintain a new channel, or 'cut-off,' for the said Little Calumet River, being an interstate river, under, through and across the several railroad properties, easements, and rights of way of these several petitioners, because: (a) The Drainage Act does not empower the State of Indiana to change and divert an interstate natural water-course from its natural water shed. (b) And because, by section 8½ of said act, the work of draining the Little Calumet River is vested solely in the officers and the courts of Lake County. (c) And because the Little Calumet River is, and is to be used, for interstate commerce. And so the State of Indiana, by the petitioners aforesaid, and its officers, had no right to proceed in rem against the property of these appellants in Porter County." That the said petition as to said points for a rehearing was duly supported by brief by said appellants.

9.

This defendant denies that said *rain* or its branches is correctly described in paragraph nine of complainant's bill of complaint, and also denies that the drainage area is correctly shown upon the map exhibited with said bill, but defendant admits that the said drain and its branches, under the characterization "Burns Ditch," is exhibited with substantial accuracy on the said map. Defendant further alleges that, under issues duly made presenting such matters, the said Circuit Court of Porter County, Indiana, pursuant to request for a special finding of facts and conclusions of law, made by certain railroad companies, defendants to said proceeding, found and stated in said cause the facts specially, and stated its conclusions of law thereon; that, among other things, said findings state that said drain has a main channel in Porter County, Indiana, extending from said river northward a distance of one and one-tenth miles to Lake Michigan; that said drain has a branch extending
28 eastward from said main channel about one and one-half miles to the junction of said river and Salt Creek, and that it has another branch extending from a point in Deep River, about four and three-quarters miles east of the west line of Porter County, extending thence northeasterly across said Calumet River and to said main channel of said drain, to be constructed at such a gradient as to carry the waters of said Deep River to the east of said branch, as well as the waters of said Calumet River between said main channel of said drain in said Porter County and the point where said west arm intercepts said river, to the northeast and to convey such waters into said main channel in said Porter County, and from thence into Lake Michigan. That said court further found as follows: That the waters of said Little Calumet River travel from the intersection of said Salt Creek to its outlet in Lake Michigan at South Chicago, in the State of Illinois, a distance of fifty-four miles, and that the fall thereof in that distance is only 19.5 feet; that said river has natural curves at frequent intervals and at places is partially ob-

structed by washed materials, pilings of bridges, willows, etc.; that it is a slow and sluggish stream; that the capacity of said river is too small for the volume of water supplied by its water shed; that in times of heavy rains and freshets, and at times when snow is melted in large quantities, said river overflows its banks and spreads out over a marsh of 14,000 acres in the counties of Porter and Lake in said State of Indiana; that said marsh, at its widest part in said Porter County, is a half mile or more wide, and in said Lake County is a mile and half wide; that by reason of the overflow of said Calumet River and its failure to carry off the surplus waters flowing along said channel the marsh aforesaid is rendered wet, cold and unfit for cultivation; that said marsh needs drainage, and by the construction of said proposed drain it can be drained and reclaimed so that a large part of it can be farmed and cultivated; that there are numerous highways crossing said marsh which are wet and at times unfit for travel or use because of their wet and overflowed condition; that by the construction of said proposed drain said highways will be drained so that their maintenance for public travel will

29 be less expensive and their use for public travel will be uninterrupted by overflows; that there are numerous railway lines crossing said marsh and said river; that the roadbeds of some of them become wet and saturated with water; that thereby said roadbeds are weakened, making the cost of their maintenance more expensive; that by the construction of said drain said roadbeds will be drained, and thereby rendered more safe for the movement of trains and less expensive to maintain; that the proposed drain will improve the public health and will benefit public highways in Calumet and North townships, in the City of Gary, and in the town of East Gary, all in said county of Lake, and also public highways in Portage township in said Porter County, and a highway in Westchester township in said county; that the proposed drainage will be of public utility, and will be sufficient to properly drain the lands and easements to be affected; that said Little Calumet River has several small tributaries, and one larger tributary known as Hart Ditch entering said Little Calumet River about two and one-half miles east of the state line; that said Hart Ditch has a bed and banks, is several miles in length and flows continuously and seldom, if ever, goes dry, and that practically all of the water coming from the tributaries above mentioned, including the Hart Ditch, which empty into the Little Calumet River west of the point where the proposed Main Ditch has its origin will continue to flow down the natural course of said Little Calumet River and discharge their waters into Lake Michigan through said river at South Chicago, as heretofore; that upon said special findings the court stated conclusions of law in favor of the petitioners for said drain; that for the sake of greater certainty a copy of said special findings and conclusions of law is exhibited herewith and made a part of this answer, and is marked exhibit A; that special findings were only requested in said proceeding by three certain railroad companies, defendants in said cause, but as to all other parties to said proceeding the findings of said court were general and in favor of the petitioners in said

proceedings, and that by the judgment and decree of said court duly given said work of drainage was established and this defendant was duly appointed by said court constructions commissioner in said matter, in which capacity, and not otherwise, he is now acting, and that said proceeding is now pending, and within the jurisdiction of said Porter Circuit Court and the judge thereof, for the purpose of constructing and completing the drain so established, and that complainant has brought this suit without the consent or authorization of said court or its judge so to do.

And this defendant further says that each and all of the matters so found by said court were at the time of the filing of the original petition for drainage in said proceeding, ever since has been, and now is, true; that each of said matters were by remonstrance duly in issue in said proceeding; that the drain so established by said court was found and reported by the drainage commissioners in that behalf appointed, in their final report, to be the best and cheapest method of drainage, and that said court, by its finding and decree, assessed with benefits for and on account of said proposed drain approximately 14,000 acres of land in and about said marsh in Porter and Lake Counties aforesaid, and also assessed with such benefits many public and quasi-public easements in said counties situate; that the assessments so made in said Lake County extend from the east line thereof down to a point about two and one-half miles east of the Indiana-Illinois state line; that at the time of the institution of said proceedings, ever since, and now, there were and are large and rapidly growing cities in said Lake County in the vicinity of said marsh, to-wit: Gary, East Chicago and Hammond, and that the presence of said marsh then and now affects deleteriously the health of large numbers of the inhabitants of each of said municipalities; that at the time of the institution of said proceedings the said City of Gary was immediately bounded on the south by said marsh, and many of its inhabitants resided along the edge of said marsh, and that since said time said city has become a city of approximately 40,000 inhabitants, extending territorially over and across said marsh and far to the south thereof, and that many of its inhabitants now reside near and on each side of said marsh; that the time has now come in which, if said overflow of said river in said Lake County can be stopped, as will be done by the construction of said proposed work of drainage, the same marsh in said county of Lake will be built up and inhabited by large numbers of people, and that the presence of said marsh is a heavy clog on the agricultural as well as on the industrial development of the State; that the construction of said drain will not divert more than one-quarter of the flow of said river in Illinois in times of drought; that during the greater part of each and every year there is and will be more water in said river than is necessary to supply all reasonable wants of the people in Illinois and its inhabitants; that in fact the quantity of water now coming down said river is so great in Illinois that vast areas of its lands are thereby rendered of a marsh and overflowed character, and that the carrying out of said work of drainage will benefit the health of large numbers of people in Illinois, to-wit: many thousands, and

that without said work said areas, both in Illinois and in Indiana will be and remain so far flooded as to be worthless; that the said work of drainage will not divert more water from said river than is reasonable, giving due consideration to the wants and needs of the people of the State of Illinois, and the fact is that from said work great good will result to the State of Illinois, as well as to the State of Indiana, and to the inhabitants of each. And this defendant further alleges that conditions in Indiana in respect to said marsh were such, at the time of the original filing of said drainage proceeding, ever since have been, and now are such, as to amount to a public nuisance, and that said nuisance will be abated by said work of drainage; that without imposing an expense upon large numbers of the citizens of the State of Indiana which would confiscate their property and be utterly unreasonable and impractical, there is no other method by which such conditions in Indiana could be abated than by the method here drawn in question. This defendant denies that by said work of drainage the velocity and flow of water in said river will be largely reduced at a point opposite said Blue Island station, or that complainant will be unable to operate said station (including the addition in said bill of complaint mentioned) with the same degree of efficiency and economy as said station is at present being operated, and would continue to be operated but for said work, and this defendant denies that said complainant or its property will be damaged in any sum whatever by the building and operation of said drain.

32

And this defendant further answering says that he is without knowledge of each of the following matters: As to the boilers or other equipment at said station or hereafter to be installed or as used therein, as to the operating agreement with said Commonwealth Edison Company, as to the power now or hereafter to be generated at said station, or as to the condensers now or hereafter to be used in connection with said river, or as to their operation. This defendant denies that the flow and volume of said river are now generally sufficient to carry off the heated water from the condensers alleged now to be used at said station, and further denies that the volume and flow of said river will hereafter ordinarily be sufficient for that purpose. Defendant further answering denies that the construction of said drain will change or in any wise affect the channel of the Little Calumet River below Deep river, and he says that said drain will not divert any waters which now find their way into said Little Calumet River below said Deep river, and defendant denies that one-half of the volume of water normally and naturally flowing in said Little Calumet River will be diverted, and further denies that the volume and flow of said river at or above said station will be less than one-half of its present volume and flow at that point.

10.

This defendant denies that the act of the Legislature of Indiana under which said work has been established, or that the decree establishing the same, is void or in any wise invalid, and he further denies

that his proposed work will be unlawful. Defendant further denies that said drain will injure or damage complainant's property, or that it will deprive complainant of its property without due process of law, either in violation of the Fourteenth Amendment to the Constitution of the United States or otherwise. On the contrary, this defendant says that said complainant has no property right in the waters of said stream or any part thereof; that it and its predecessors were at all times charged with knowledge of the duty

33 and power of the State of Indiana to abate said marsh; that the said marsh was conveyed to the State of Indiana from the United States under the general Swamp Land Act of the Congress of the United States, and that thereby said State became and is charged with a duty to drain said lands; that the lands on which said station is located were property of the United States at the time of the enactment of said Swamp Land Act, and at the time the said marsh in Indiana, was patented by the United States to the State of Indiana; that complainant's property is not taken or proposed to be taken, by said work of drainage. That complainant, in respect to said stream, has no right which is not subject to be affected to the full extent set forth by complainant by the exertion of the police powers of the State of Indiana; that if complainant will sustain any damage the same will be indirect and consequential, and of the same character as will be sustained by other riparian proprietors along said stream in Illinois. This defendant further says that as against a public work of this character the laws of the State of Indiana extend no remedy to one only secondarily or consequentially damaged, and particularly if the person complaining and his property was beyond the reach of the process of the courts of the State at the time the proceeding establishing such work was had.

And this defendant further answering denies that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and prays to be dismissed with his reasonable costs in this behalf most wrongfully sustained.

And defendant further moves the court to dismiss this suit because of insufficiency of fact, arising on the face of the bill of complaint herein, to constitute a valid cause of action in equity.

STEPHEN P. CORBOY,

*Drainage Commissioner of the
Calumet Ditch, Defendant.*

R. W. BURNS,
FRANK B. PATTEE, AND
JOHN H. GILLETT,

Solicitors for Defendant.

34

Special Findings Filed.

In the Matter of the CALUMET DITCH.

Special Finding.

The Court having been requested at the proper time to find the facts specially and state its conclusion of law thereon by the remon-

strators, the Lake Shore and Michigan Southern Railway Company, The Chicago, Indiana and Southern Railroad Company, the Michigan Central Railroad Company, does now find the facts to be as follows:

1. Topography of the Little Calumet River.

The Little Calumet River described in the petition and proceedings for the establishment of the ditch has its course in the county of La Porte, near Otis, Indiana, and runs westerly and in a measure parallel with the south shore of Lake Michigan until such river crosses the State line into Illinois; slowing thence westerly for a distance and until in time it runs and empties into the Big Grand Calumet, which last named river empties into Lake Michigan near South Chicago, Illinois. Between the valley of the Little Calumet River and the lake shore in Porter and Lake County, Indiana, there is a high ridge of sandy land averaging about thirty feet above the level of Lake Michigan; and some ten feet above the Calumet Valley. This sand ridge is a little more than one mile in width. There are no tributaries flowing into the said Calumet from the North.

It has on the south a tributary known as Salt Creek, which has its origin near Valparaiso in Porter County and which takes a Northwesterly course to its intersection with the Little Calumet River at a point about four miles west of the west line of Porter County and about two miles south of the south shore of Lake Michigan. Said river has a tributary with its origin near Crown Point, in Lake County, known as Deep River, which intersects the Little Calumet River at a point about four and three-fourths miles west of the Porter County line and about three miles south of the south shore of Lake Michigan. These tributaries have well defined channels with beds and banks, are several miles in length respectively, and seldom, if ever, go dry. The Little Calumet River has several small tributaries and one larger tributary known as the Hart Ditch entering said Little Calumet River from Lake County west of the point where the Main Ditch has its origin. Said Hart Ditch enters the Little Calumet Ditch about two and one-half miles east of the State line. The said Hart Ditch has a bed and banks, is several miles in length and flows continuously and seldom if ever, goes dry. Practically all of the water coming from the tributaries above mentioned, including the Hart Ditch, which empty into the Little Calumet River west of the point where the proposed Main Ditch has its origin will continue to flow down the natural course of said Little Calumet River and discharge their waters into Lake Michigan through said river at South Chicago as heretofore.

All of the water of the Little Calumet River and that of all of those of its tributaries which enter it easterly from the point of the origin of the Main Ditch herein proposed will be carried by said Main Ditch and said Salt Creek Arm entering said Main Ditch, into Lake Michigan and will have as an outlet the outlet of said Main Ditch. The total area of the water shed to be drained by this proposed ditch consists of three hundred and fifty square miles.

2. The Court finds that Susan Clough is one of the petitioners in the above entitled cause and that she was at the time of filing the petition herein, has ever since been and now is the owner of the following described real estate in Lake county, in the State of Indiana, to wit: The South West quarter of the North West quarter of Section twenty (20), Township thirty-six (36) North, Range Eight (8) West.

35 The Court further finds that the Tolleston Club of Chicago is one of the petitioners herein; that said petitioner was at the time of filing the petition herein, has ever since been and now is the owner of the Northeast quarter of the Southeast quarter of Section Eighteen (18), Township Thirty-six (36) North, Range Eight (8) in Lake County, Indiana.

The Court further finds that Gostlin, Meyn & Company is one of the petitioners herein; that said petitioner was at the time of filing the petition herein, has ever since been and now is the owner of the West one half of Lot Seven (7), excepting therefrom the railroad crossing the same in Section Twenty-four (24), Township thirty-six (36) North, Range Nine (9) West in Lake County, in the State of Indiana.

That said petitioners desire to drain said lands above described; that the drainage of said respective tracts of land cannot be accomplished in the best and cheapest manner, without affecting the lands of others; that said petitioners are the owners respectively of the said separate and distinct tracts of land above described and that the said lands of each of said respective petitioners were at the time said petition was filed, ever since have been and now are situated outside the corporate limits of cities and towns and not within the corporate limits of any city or town in this State; that said petitioners find it necessary to effectuate successful drainage of the said lands above described; that said lands cannot, nor can either or any of said tracts of land, be drained without affecting the lands of others; that each of the above described tracts of lands respectively will be benefited by the drainage herein prayed for and that each of said described tracts of land are assessed with benefits for said drainage; that each of said tracts of land are and were at the time of the filing of the petition and are at present wet and marshy and in need of drainage; that by the construction of said proposed drain each of said described tracts of land will be reclaimed and drained and benefited by this proceeding; which said lands are not and were not when said petition was filed within the corporate limits of any city or town and which said lands are situated in Lake County, Indiana.

3. That the proposed Calumet Ditch consists of a Main Ditch and a branch ditch known as the Salt Creek Arm; that the course of said proposed Main Ditch is described as commencing at a point in Lake Michigan which is 231.4 feet south and 927.3 feet west of the pipe at the Northeast corner of Lot three (3) in Section twenty-five (25), Township Thirty-seven (37) North, Range Seven (7) West in Porter County, Indiana, and thence South Seven (7) degrees Eighteen (18) minutes East 1913.1 feet, thence by a curve of Two (2) degrees to the right 281 feet; thence South One (1) degree Forty-

one (41) minutes East 3092.4 feet, thence by a curve of four (4) degrees to the left 310.7 feet, thence South Fourteen (14) degrees Seventeen (17) minutes East 1102.8 feet, thence by a curve of ten (10) degrees to the right 600 feet, thence South 45 degrees fifty-three (53) minutes West 3600 feet, thence by a curve of Six (6) degrees to the right 200 feet, thence south fifty-seven (57) degrees fifty-three (53) minutes west 2484.7 feet, thence by a curve of Six (6) degrees to the right 192.1 feet, thence South Sixty-nine (69) degrees twenty-five (25) minutes West 6761.8 feet, thence by a curve of fifteen (15) degrees to the left 308 feet, thence South twenty-three (23) degrees Thirteen (13) minutes west 1038.4 feet, thence by a curve of Eleven (11) degrees Nine (9) minutes to the right 377.7 feet, thence south sixty-six (66) degrees thirty-one (31) minutes West 14745.3 feet, thence South Seventy-five (75) degrees Thirty-eight (38) minutes West 4169 feet, thence by a curve of Eight (8) degrees to the left 445 feet, thence South Forty (40) degrees two (2) minutes West 312.5 feet, thence South Twenty-six (26) degrees fifty-two (52) minutes West 2095.9 feet, thence South Eleven (11) degrees Twenty-seven minutes West 49.6 feet, and there terminating in Deep River at a point 1251 feet East and 852 feet North of the Southwest corner of section Thirteen (13), Township Thirty-six (36) North, Range Eight (8), West, in Lake County, Indiana.

36 And the course of said Salt Creek Arm is described as commencing in the Main Ditch as above described at station number sixty-three (63) plus 30.4 feet and thence by a curve of four (4) degrees to the left 1930.7 feet, thence North Eighty-eight degrees Thirty-nine (39) minutes East 5619.3 feet, and there terminating in the Little Calumet River at the mouth of Salt Creek at a point of 1230 feet East and 100 feet South of the center of Section Thirty-one (31) Township Thirty-seven (37) North, Range Six (6) West in Porter County, Indiana.

4. Said Calumet Ditch is located in the counties of Porter and Lake in the state of Indiana, 22,300 feet of the length of said ditch is located in Lake County and 29,650 feet of the length of said ditch is located in Porter County, and the greatest length of said proposed ditch is located in Porter County.

5. The Main Ditch will have a bottom width of Seventy feet from station zero (-its points of outlet) for a distance of one and two tenths miles up stream and bottom width of fifty feet for the remaining distance up stream. The Salt Creek Arm will have a bottom width of fifty feet from its point of intersection with the Main Ditch for a distance of Nine Hundred feet up stream and a bottom width of forty feet for the remaining distance up stream. Said proposed Main Ditch will have side slopes of two feet horizontally to one foot vertically for a distance of one and two tenths miles up stream from the outlet and side slopes of one foot horizontally to one foot vertically for the remaining distance up stream. Said Salt Creek Arm will have side slopes of one foot horizontally to each foot vertically. Said Main Ditch will vary in depth from eleven feet at its starting point to fifty-eight feet at its greatest depth. Said Salt Creek Arm will vary

in depth from ten feet at its shallowest point to twenty-two feet at its deepest point. The grade line of the bottom of the Main Ditch will have a downward slope toward the outlet of one foot perpendicularly to ten thousand feet horizontally. The Salt Creek Arm will have a corresponding slope for bottom grade line for a distance of nine hundred feet. The Salt Creek Arm will bear from a north-westerly course to a northerly course by gentle curve. The main Ditch will take an easterly course down stream from its upper end for a distance about seven and twenty-three hundredths miles and will then curve by a gentle curvature to the North and take a course north for a distance of one and two tenths miles to its outlet into Lake Michigan. The Main Ditch will have a total length of eight and forty-three hundredths miles.

6. Two rows of jetties are to be constructed each starting at a point twenty-five feet inside of the shore line above highwater mark on the south shore of Lake Michigan and extending out into the lake at right angles with the shore line of the lake and parallel to the line of the proposed drain for a distance of two hundred feet. Said respective rows of jetties are to be an equal distance of forty feet from the center line of the proposed drain produced. Said two rows of jetties are to be at a distance of eighty feet apart. Each row of jetties consists of white oak piling driven side by side so that their edges touch in two rows. The rows to be six feet apart. The piling to be tied together with timber, then the space between the rows to be completely filled with rock. The top of the piling and filling to come to a height of three feet above the surface level of the water in the lake. The space between the rows of jetties to be excavated to grade line of drain. Said jetties will protect the outlet of said drain from becoming filled with gravel and sand.

37 7. At a point nine hundred feet up stream from the point of the outlet of the Salt Creek Arm into the Main Ditch there is to be constructed a dyke on said Salt Creek Arm. Said dyke is provided as aforesaid in order to reduce the fall in said Salt Creek Arm by changing the grade line of bottom of ditch. By the aid of said dyke the water is to be dropped down nine feet from the grade line at crest of dyke to the new grade line nine feet below at floor of dyke. The drain will have a depth of eleven feet at and above the crest of the dyke and a depth of twenty feet just below the crest of the dyke. Said dyke is to be constructed securely with white oak piling and heavy white oak timbers throughout and all connections to be securely fastened. It will have side walls or wings to conduct the water in, through and beyond said dyke, a crest of timbers, for the water to fall over and a floor or apron constructed horizontally below to catch the water as it falls over the crest; also a perpendicular wall facing for space between crest and apron. The bottom grade line of said Salt Creek Arm from the crest of said dyke up to its source is to be elevated to the extent of four feet perpendicularly to ten thousand feet horizontally. Said dyke will serve to reduce the velocity of the water flowing in the channel of said Salt Creek Arm and will prevent excessive washing on the sides and bottom of said channel.

The Court finds that the said jetties and the said dyke above men-

tioned are to be constructed of substantial and durable material; that the timbered parts of said dyke are to consist of white oak timbers of the best grade and white oak piling of the best grade and suitable size; that said timbers that tie said structure together are heavy and durable and to be of the best grade of white oak; that said dyke will remain permanently as part of the construction work of said system of drainage; that the piling to be used in said jetties are to make them secure and durable and the cross timbers and ties and fastenings are to be of heavy white oak timber of the best grade; that said dyke and jetties are each respectively to be fastened in numerous places with substantial bolts so as to hold the same together and in position securely; that the greater part of said structure will be submerged and under water; that the jetties are to be completely filled with broken stone to a height of three feet above the surface of the lake.

8. The Little Calumet River from the point where it is intersected by Salt Creek on west to its outlet has a moderate fall. The distance from the point of intersection of the Salt Creek tributary following the stream to its outlet is fifty-four miles and the total fall between said intersection and its outlet is 19.5 feet. Said river from a point two and one half miles or more above the outlet of said Salt Creek, on down stream to its outlet, at South Chicago, has a definite channel and can be readily traced. It varies in width but has an average width of from sixty to ninety feet. Its depth also varies and ranges from only a few inches in depth below the surface of the marsh at some parts of its course to depths of four feet or more at other places in its course. It has natural curves at frequent intervals throughout its course. There are some places where it is partially obstructed by washed material, piling of bridges and willows, etc. The capacity of said river is too small for the volume of water supplied by its water shed. The fall is also so slight as to make it a slow and sluggish stream. At times of heavy rains and freshets and at times when snow is melted in large quantities the river overflows its banks and the said overflow waters spread out in wide sheets over the marsh hereinafter described. Said overflow sometimes reach- a width of a mile to a mile and a half in the widest places along the course of said river in Lake County, and a half mile or more in Porter County.

38 9. There is a marsh which begins two and one half miles or more east of the intersection of said Salt Creek with the Little Calumet River which said marsh extends thence in a westerly course following the line of the Little Calumet River westerly and crossing that part of Porter County westerly from said starting point of said marsh and continuing on westward crossing Lake County. Said marsh has a width ranging from one half mile to one and a half miles throughout its course as above described. The lands comprising said marsh become wet at various times of the year and are unfit for cultivation because of excessive moisture due to the overflow of said Little Calumet River and its tributaries and the lack of said Little Calumet River to drain and carry off the surplus waters during the rainy months and seasons of the year and said lands are thereby

rendered wet, cold and unfit for cultivation and uninhabitable. There are fourteen thousand acres of said lands contained in said marsh. Said lands need drainage. By the construction of the proposed drain said land will be drained and reclaimed so that the great portion can be farmed and cultivated. There are numerous highways crossing said marsh which are *set* and at times unfit for travel or use by the public because of their wet and overflowed condition. By the construction of said proposed drain said highways will be drained so that their maintenance for public travel will be less expensive and their use for public travel will be uninterrupted by overflows. There are numerous railway lines, other than those herein specifically mentioned, crossing said marsh and the Little Calumet River; that the road beds are raised several feet above the surface level of said marsh; that in times of high water the grades and road beds of some of said railroad lines become wet and saturated with water; that it weakens said road beds; that makes the cost of maintenance more expensive. By the construction of said proposed drain said railway grades and roadbeds will be drained and thereby made more safe for the movement of trains and less expensive to maintain. Very many years ago the Lake Shore and Michigan Southern Railroad was constructed and is now operated and maintained under the general laws of Indiana -long on the said ridge of high land between the said river and the Lake Michigan and through the counties of Lake and Porter. The last named railroad uses a double track railroad system between Chicago and the city of Cleveland, Ohio, and forms a part of what is known as the New York Central Lines or system. The Chicago, Indiana & Southern Railroad Company also owns and maintains a single track railroad line upon said ridge and near to and approximately parallel to the Lake Shore Railroad.

10. By the construction of said Main Ditch and Salt Creek Arm the waters flowing down the Little Calumet River from the East and the waters of said Salt Creek will enter said Salt Creek Arm at the point designated as the source of said Salt Creek Arm and be thence carried along the course of said Salt Creek Arm to its outlet into the Main Ditch and thence down the main Ditch into the Lake thereby securing an outlet into Lake Michigan. That by the construction of said Main Ditch at its starting point said waters will be carried thence down said Main Ditch and into Lake Michigan through the outlet of the Main Ditch.

39 11. The Court finds that it will be practicable to accomplish the proposed drainage without an expense exceeding the aggregate benefits; that the aggregate benefits of said proposed drainage will exceed the aggregate costs, damages and expenses of accomplishing said proposed drainage. That the costs, damages, and expenses of such drainage will be less than the benefits, which will result to the owners of the lands which will be benefited thereby. That the total estimated cost for the construction of the drainage herein including all damages allowed by the commissioners and approved by the court is 314,398.98 Dollars; that the total benefits assessed are 335,264.69 Dollars.

12. That the proposed work will improve the public health.

13. That the proposed work and drainage will benefit public highways in Calumet Township and North Township; also a public highway in the town of East Gary and public highways and streets in the city of Gary, in Lake County; also public highways in Portage Township, and a public highway in Westchester township, in Porter County, Indiana.

14. That the proposed work and drainage will be of public utility.

15. That the proposed work as decided upon and reported by the Commissioners of Drainage will be sufficient to properly drain the lands and easements to be affected.

16. The Court finds that the Chicago, Indiana and Southern Railroad Company is a steam railroad Company duly organized and existing under the general laws of the state of Indiana providing for the incorporation of steam railways and has been such continuously since the date of filing the petition herein, and was such railroad company on said date; that said company at the time of filing the petition herein owned and has ever since owned and does now own its right of way which is 100 feet in width and which crosses Section Thirty-six, (36), Township Thirty-seven North, Range Seven (7) West, in Porter County, Indiana, and which extends in an east and west direction; that by the report of said Drainage Commissioners said Company was awarded damages in the sum of \$17,000.00 to its said right of way in said Section, township and range aforesaid.

The court finds that the Main channel of the proposed ditch will intersect said right of way within said section aforesaid at approximately right angles to the line of said company's right of way and that said intersection will be made at a point near station thirty-seven (37), which point is between station zero and station sixty-three plus thirty of the line of said Main channel of said ditch; that at the point of said intersection the specifications provide that bridges of railroads and railways may be built upon piers to be constructed in the side slopes of said channel, but not closer than forty-three feet on either side from the center line of the channel measuring along the bottom of the channel; that the piers for a bridge crossing said channel when so constructed can be set agreeably to the specifications in said report at a distance of eighty-six feet in the clear from each other; that the distance from the grade line of the bottom of the channel of said proposed ditch to the top of the rails of the railroad track of said company at said point is 30-75/100 feet; that said railroad company has a single track and two switch tracks with two switches for the same at the point in said section where its right of way crosses the channel of said proposed ditch; but that said switch tracks do not cross the channel of the proposed ditch, but that the points where both switches are come within the channel of said ditch; that at the point where the channel of said proposed ditch intersects the right of way of said railroad company there is not now and never has been any ditch drain or water course; that said railroad company is and

40 was at the time said petition was filed engaged in carrying freight and passengers for hire over its said right of way crossing said section from points both east and west of the point of its intersection with the channel of the proposed ditch; that said railroad company has no other property other than its said right of way that is in any manner affected or interfered with or touched by said drainage proceedings herein; that said Chicago, Indiana & Southern Railroad Company will not be damaged by the construction of said proposed drain.

17. The Court finds that the Lake Shore and Michigan Southern Railway Company is a steam railroad company duly organized and existing under the general laws of the State of Indiana providing for the incorporation of steam railways and has been such continuously since the date of filing the petition herein and was such railroad company on said date; that said company at the time of filing said petition owned, has ever since owned and still owns a right of way for its railway line which is 100 feet in width; that said right of way crosses Section thirty-six (36) Township thirty-seven (37) North, Range Seven (7) West in Porter County Indiana in an east and west direction; that by the report of said drainage commissioners said company was awarded damages in the sum of \$35,000.00 to its said right of way in said section, township and range aforesaid.

The Court finds that the main channel of the proposed ditch will intersect said right of way within said section aforesaid at approximately right angles to the line of said company's right of way; that said intersections will be made at a point near station Forty-seven (47), which said point is between station zero and station sixty-three plus thirty of the line of said main channel of said ditch; that at the point of said intersection the specifications provide that bridges of railroads and railways may be built upon piers to be constructed in the side slopes of said channel but not closer than forty-three feet on either side from the center line of the channel, measuring along the bottom of the channel; that the piers for bridges crossing said channel when so constructed can be set agreeably to the specifications in said report at a distance of eighty-six feet in the clear from each other; that the distance from the grade line of the bottom of the channel of said proposed ditch to the top of the rails of the railroad track of said company at said point is thirty-four feet; that said railroad company has a double track at the point where its right of way crosses the channel of said proposed ditch; that at the point where said intersection is made the surface level of the country is twenty-five to thirty feet above the surface level of the water in Lake Michigan; that at the point where the Little Calumet River enters the main channel of said proposed drain the surface level of the water in said river is about nineteen feet higher than the surface level of the water in Lake Michigan; that at the point where the channel of said proposed ditch intersects the right of way of said railroad company there is not now and never has been any ditch, drain or water course; that said railroad company is a common carrier

of freight and passengers and is engaged in carrying freight and passengers for hire over its said right of way crossing said section above described from points both east and west of the point of its intersection with the channel of the proposed ditch; that said railroad company has no other property other than its said right of way that is in any manner affected or interfered with or touched by said drainage proceeding herein; that said Lake Shore and Michigan Southern Railway Company will not be damaged by the construction of said proposed drain.

41 18. The Court further finds that at the point where the ditch passes under the bridge of the Michigan Central Railroad Company the natural channel of the stream spanned by the present bridge will have to be deepened about seven or eight feet, which will necessitate the re-building of the abutments and piers upon which the bridge rests.

The Court also finds that the defendant, Michigan Central Railroad Company, will neither be damaged or benefited by the proposed drain.

19. The Court finds that the Chicago, Indiana and Southern Railroad Company, the Michigan Central Railroad Company and the Lake Shore and Michigan Southern Railway Company or either of them own no property affected by the proposed drainage than heretofore mentioned in the previous findings.

20. The Court finds that the right of way described in the Commissioners' Report in Sections Sixteen (16) and Twenty-one (21) Township thirty-six (36) North, Range nine (9) West, in Lake County and the following real estate in Lake County, described as follows; East four chains of the Southwest quarter of the Northwest quarter of Section twenty-one (21) Township thirty-six (36) North, Range Nine West, as the property of the Indiana Harbor Railroad Company and is now owned by the Indiana and Southern Railroad Company, and that neither said right of way or parcel of real estate above described will be benefitted by the construction of the proposed drainage.

Dated this 21st day of March, 1911.

(Signed)

HENRY A. STEIS,
*Special Judge of the Porter
Circuit Court of Porter County.*

Conclusion of Law.

Upon the foregoing facts, the Court concludes the law to be as follows:

1st. That the Chicago, Indiana and Southern Railroad Company should not be charged with any benefits by reason of the construction of the proposed work either as to its right of way or the parcel of land described as the East four chains of the Southwest quarter of the Northwest quarter of Section twenty-one (21), Township Thirty-six (36) North, Range Nine (9) West, in Lake County, Indiana; and that said Company is not entitled to recover any damages by reason of the construction of the proposed work.

2nd. That the Michigan Central Railroad Company should not be charged with any benefits by reason of the construction of the proposed work, nor is it entitled to recover any damages.

3rd. That the Lake Shore and Michigan Southern Railway Company is not entitled to recover any damages by reason of the construction of the proposed work.

4th. That the proposed work is of public utility and should be established and constructed.

Dated March 21, 1911.

(Signed)

HENRY A. STEIS,
*Special Judge of the Porter Circuit
Court of Porter County, Indiana.*

42 And afterwards, to-wit: At the May Term of said Court, on the 29th day of June, 1917, before the Honorable Aibert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

This cause coming on now to be heard by the court upon the motion of the defendant for a dismissal of the bill of complaint, and said motion being argued by counsel, and submitted for the consideration of the court, and it appearing to the court that the relief prayed in the bill of complaint is not allowable under the provisions of section 265 of the Judicial Code of the United States,

It is now ordered, adjudged and decreed by the court that said motion be and the same is hereby sustained.

And it is further and finally ordered, adjudged and decreed by the court that the bill of complaint be and the same is hereby dismissed for want of jurisdiction at the costs of the complainant.

And afterwards, to-wit: At the May Term of said Court, on the 1st day of August, 1917, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now the Public Service Company of Northern Illinois, the plaintiff in the above entitled cause, and files with the Clerk of said Court its assignment of errors in said cause, which assignment of errors reads as follows:

Assignment of Errors.

The plaintiff in the above entitled cause says there is manifest error in the proceedings and judgment entered in said cause on the 29th day of June, 1917, and assigns the following as the errors upon which it will rely upon the prosecution of the appeal in said cause:

1. That the United States District Court for the District of Indiana, erred in sustaining the motion of defendant to dismiss the Bill of Complaint in said cause.

2. That the United States District Court for the District of Indiana erred in dismissing the Bill of Complaint in said cause.

43 3. That the United States District Court for the District of Indiana erred in adjudging and decreeing the dismissal of the Bill of Complaint for want of jurisdiction in said cause.

Wherefore, said Public Service Company of Northern Illinois prays that said order and decree be reversed and said District Court for the District of Indiana be ordered to overrule said motion to dismiss said Bill of Complaint.

ISHAM, LINCOLN & BEALE,
SMITH, REMSTER, HORN BROOK &
SMITH,
*Solicitors for Plaintiff, Public Service
Company of Northern Illinois.*

And said plaintiff also presents to the court its petition which was this day filed with the Clerk of said Court, praying for the allowance of an appeal to the Supreme Court of the United States from the final order, judgment and decree made and entered in said cause on the 29th day of June, 1917, wherein it was adjudged that the bill of complaint therein be dismissed for want of jurisdiction, which petition reads as follows:

Petition for Appeal.

The above named plaintiff, Public Service Company of Northern Illinois, feeling aggrieved by the final order, judgment and decree entered in the above entitled cause on the 29th day of June, 1917, dismissing the Bill of Complaint therein for want of jurisdiction, does hereby appeal from said final order, judgment and decree, to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith, and it prays that this, its appeal, may be allowed; and that a transcript of the record and proceedings and papers upon which said order, judgment and decree was made and rendered, duly authenticated, may be sent to the Supreme Court of the United States.

Your petitioner further prays that the proper order relating to the security to be required of it to perfect its appeal, be made.

ISHAM, LINCOLN & BEALE.
SMITH, REMSTER, HORN BROOK &
SMITH.

44 And upon a consideration by the court of said petition, the same is hereby granted and allowed and it is ordered that a duly certified copy of the record, papers and entries and all proceedings thereunder be transmitted to the Supreme Court of the United States.

It is further ordered that the bond on appeal in said cause be fixed at the sum of \$500, with good and sufficient surety to be approved by this Court.

And said plaintiff now presents to the court its bond executed to the defendant in the sum of \$500, with the United States Fidelity & Guaranty Company as surety thereon, which bond is now approved

by the court both as to form and the security thereof and which bond with said approval endorsed thereon reads as follows:—

Know all men by these presents, That we, Public Service Company of Northern Illinois, as principal, of Cook County, in the State of Illinois, and United States Fidelity and Guaranty Company, as surety, of the County of Marion and State of Indiana, are held and firmly bound unto Stephen P. Corboy, Drainage Commissioner of the Calumet Ditch, in the sum of Five Hundred Dollars (\$500.) lawful money of the United States, to be paid to him and his successor or successors; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our successors and assigns, by these presents.

Sealed with our seals and dated this 26th day of July, 1917.

Whereas, the above named Public Service Company of Northern Illinois has prosecuted an appeal to the Supreme Court of the United States to reverse the judgment of the District Court for the District of Indiana, in the above entitled cause.

Now, therefore, the condition of this obligation is such that if the plaintiff named, Public Service Company of Northern Illinois, shall prosecute its said appeal to effect and answer all costs if it fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and effect.

45 In witness whereof, said Public Service Company of Northern Illinois, and said United States Fidelity and Guaranty Company have caused this instrument to be signed by their respective officers, duly authorized, and their respective corporate seals to be hereunto affixed.

PUBLIC SERVICE COMPANY OF
NORTHERN ILLINOIS,

By FRANK J. BAKER,
Vice-President.

Attest:

[SEAL.] P. D. SEXTON,
Secretary.

[SEAL.] UNITED STATES FIDELITY &
GUARANTY CO., BALTIMORE,
MD.,

By JOHN E. MESSICK,
Attorney-in-fact.

Indianapolis Form 6.

STATE OF INDIANA,
Marion County, ss:

Before me, a Notary Public in and for said County and State, personally appeared John E. Messick, who being by me duly sworn upon his oath did depose and say that he is the Attorney-in-fact of

the said United States Fidelity and Guaranty Company, of Baltimore, Maryland; that he knows the corporate seal thereof; and that the seal affixed to the within bond is such seal;

That the said John E. Messiek signed the bond as Attorney-in-fact of said Company in accordance with a resolution, passed at a meeting called and held by the Board of Directors of the said United States Fidelity and Guaranty Company, at its Home Office in Baltimore, Maryland, under date of February the 29th, 1904.

Witness my hand and Notarial Seal this 26th day of July, 1917.

[SEAL.]

LOUIS W. WITTE,
Notary Public.

My commission expires August 7th, 1918.

46 STATE OF ILLINOIS,
County of Cook, ss:

Be it remembered, that on this 26th day of July, 1917, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Paul D. Sexton, Secretary of the Public Service Company of Northern Illinois, the corporation mentioned in the foregoing bond, and executed such bond as such Secretary for and on behalf of such corporation; and on being duly sworn on his oath says that he is such Secretary and that the seal affixed to said bond is the corporate seal of such corporation, the same being well known to him; that Frank J. Baker is Vice-President of the Public Service Company of Northern Illinois and signed said bond and affixed said seal thereto, and that the same was executed and delivered by authority of the Board of Directors of said Public Service Company of Northern Illinois.

In witness whereof, I have hereunto set my hand and seal this 26th day of July, 1917.

WILLIAM A. BLIND,
Notary Public.

My commission expires, March 10, 1920.

This bond is approved both as to sufficiency of security and form this 1st day of August, 1917.

ALBERT B. ANDERSON,
United States Judge.

And said plaintiff now presents to the court its certificate that in said cause the jurisdiction of said court is in issue and that such question is the only question of law for decision of the Supreme Court of the United States.

Now upon said consideration said certificate is granted, which certificate is now filed and reads as follows:

Certificate.

The District Court of the United States for the District of Indiana hereby certifies to the Supreme Court of the United States that on the 29th day of June, 1917, upon motion of the defendant, a decree was entered in the above entitled cause dismissing for want of jurisdiction the bill of complaint of the complainant on the ground that it appeared to the Court that the relief prayed in the bill of complaint was not allowable under the provisions of Section 265 of the Judicial Code of the United States. A copy of such bill of complaint and motion is contained in the judgment roll filed herein to which reference is had for a more particular description thereof.

47 And this Court further certifies that in said cause the jurisdiction of this Court is in issue, and further certifies to the Supreme Court of the United States said question of jurisdiction raised by said motion to dismiss said bill of complaint on the grounds aforesaid, namely, the question whether the District Court of the United States has jurisdiction, in view of the provisions of Section 265 of the Judicial Code of the United States, to enjoin a Drainage Commissioner, appointed by the Circuit Court of Porter County in the State of Indiana in a drainage proceeding instituted under the drainage laws of said State, from constructing in Indiana a drainage ditch which would so divert from its natural course the flow of water in a river arising in and flowing from the State of Indiana into the State of Illinois, that irreparable injury and damage would be sustained by a riparian owner of land situated on said river in the State of Illinois, which was lawfully using the waters of such river, such owner not having been made a party to said drainage proceedings in the Circuit Court of Porter County.

And this court further certifies that said question of jurisdiction is the only question of law upon the pleading and process for the decision of the Supreme Court of the United States, and that this certificate is granted at the term in which the judgment in this cause was entered.

Dated, Indianapolis, August 1st, 1917.

ALBERT B. ANDERSON,
United States Judge.

48 In the District Court of the United States for the District of Indiana.

No. 215.

PUBLIC SERVICE COMPANY OF NORTHERN ILLINOIS

v.

STEPHEN P. CORBOY, Drainage Commissioner of the Calumet Ditch.

To Stephen P. Corboy, Drainage Commissioner of the Calumet Ditch, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Wash-

ington, in the District of Columbia, thirty days after the date hereof, pursuant to an order allowing an appeal filed and entered in the Clerk's office of the District Court of the United States for the District of Indiana, from a final decree signed, filed and entered on the 29th day of June, 1917, in that certain suit, being in Equity No. 215, wherein the Public Service Company of Northern Illinois is plaintiff and appellant and you are defendant and appellee, to show cause, if any there be, why the decree rendered against said appellant, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Witness the Hon. Albert B. Anderson, United States District Judge for the District of Indiana, this 1st day of August, 1917.

ALBERT B. ANDERSON,
*United States District Judge for the
District of Indiana.*

49 I acknowledge service and receipt of a copy of the foregoing citation this 6th day of August, 1917.

JOHN H. GILLETT,
*Solicitor for Defendant and Appellee, Stephen
P. Corboy, Drainage Commissioner of the
Calumet Ditch.*

And afterwards, to-wit: At the May Term of said Court, on the 8th day of August, 1917, in Recess, the following further proceedings in the above entitled cause were had, to-wit:

Præcipe for Record on Appeal of Public Service Company of Northern Illinois.

To the Clerk of the District Court of the United States for the District of Indiana:

You are requested to prepare and certify for the record on the appeal of the Public Service Company of Northern Illinois to the Supreme Court of the United States, a full and complete
50 transcript of the proceedings, entries and record in the above entitled cause, the same being as follows, to-wit:

1. The Bill of complaint filed in said cause and the entries in connection with the filing thereof.
2. The issue of process or subpoena in said cause, together with the return of the United States Marshal endorsed thereon.
3. The defendant's answer to the bill of complaint with motion to dismiss the bill of complaint, filed April 23rd, 1917, together with the entries of filing the same.
4. The entry of submission and hearing on the last named motion to dismiss the bill of complaint.
5. Judgment of the court dismissing the bill of complaint under date of June 29th, 1917.

6. Certificate of the Judge of the Court to the Supreme Court of the United States that the jurisdiction of the District Court is involved and that it is the only question involved.

7. Petition for appeal by the Public Service Company of Northern Illinois and entry thereon allowing the same and fixing the amount of the bond for appeal.

8. Assignment of errors of the Public Service Company of Northern Illinois filed with its petition for appeal.

9. Appeal bond of the Public Service Company of Northern Illinois and approval thereof by the Judge of said Court.

10. Citation of the Public Service Company of Northern Illinois to the defendant and the acknowledgment of the service thereof by his solicitors.

11. This precipe for record and acknowledgment of the service thereof, together with a copy, by the Solicitors of defendant.

12. Clerk's certificate.

ISHAM, LINCOLN & BEALE,
SMITH, REMSTER, HORN BROOK &
SMITH,
*Solicitors for Public Service Company of
Northern Illinois.*

I acknowledge service and a copy of this precipe, this 6th day of August, 1917.

JOHN H. GILLETT,
*Solicitors for Defendant, Stephen P. Corboy,
Drainage Commissioner of the Calumet Ditch.*

51 In the District Court of the United States for the District of Indiana.

I, Noble C. Butler, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings in said Court, as required by the precipe herein, in the cause of Public Service Company of Northern Illinois, v. Stephen P. Corboy, Drainage Commissioner of the Calumet Ditch, No. 215, in Equity, as the same appears of record in my office.

Witness my hand and the seal of said Court, at Indianapolis, in said District, this 22nd day of August, 1917.

[Seal District Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: File No. 26,119. Indiana D. C. U. S. Term No. 652. Public Service Company of Northern Illinois, appellant, vs. Stephen B. Corboy, Drainage Commissioner of the Calumet Ditch. Filed August 29th, 1917. File No. 26,119.